

Assistant Director General, Heritage Services
Department of Planning, Lands and Heritage
Locked bag 2506 Perth WA 6001

29th May 2019

Dear Assistant Director General,

Re: Review of the *Aboriginal Heritage Act 1972* - consultation paper feedback

I would like to express my appreciation to the Department for conducting an orderly, transparent and inclusive review process.

The comments below derive from my experience as a consultant and academic research archaeologist active in WA since 2008. The bulk of my professional experience concerns the management and research of the Weld Range in the Mid West, working for and with its Wajarri Yamaji Traditional Owners since 2009. I have also consulted in the Pilbara and SW regions of WA.

I broadly support the proposals outlined in the March 2019 Consultation Paper:

- the *AHA 1972* should be repealed (Proposal 1);
- a wider range of place-based heritage should be registered and managed under new legislation (Proposal 2);
- Aboriginal Traditional Owners should be included better in the heritage management process (Proposal 3A) and should have equal recourse to appeal against decisions they deem harmful and unlawful (Proposal 7);
- the roles of those involved both within the Department and as external facilitators need to be re-defined and managed appropriately (Proposals 3A-E);
- WA needs a register of place-based Aboriginal heritage. Perhaps, in recognition that the register does not contain general intangible heritage, it should be named the 'Place-based register of Aboriginal heritage'?
- Potentially, tiered ranking of projects/land use could be effective, particularly for managing works agreed by all stakeholders to be of low impact (Proposal 5)
- Potentially, recognising suitable, effective, good quality Indigenous Land Use Agreements in the new legislation will allow for legal protection which is better tailored to particular tracts of Country than the blanket (only) protection afforded by the *AHA 1972* (Proposal 6).
- enforcement of the new legislation should be upgraded to match that offered to historic heritage and with a 5 year limitation period (Proposal 8);
- Special protection afforded to 'Protected Areas' should be carried forward into the new legislation (Proposal 9) with better arrangements for site maintenance by Traditional Owners.

My main concerns are with Proposals 3A, 5 and 6:

- Proposal 3A: what happens in contested country / overlapping Native Title Claim areas / where Native Title holders have multiple heritage service provider entities? Will DPLH recognise and support multiple LAHS? In the case of Wajarri Yamaji, for example, the Hamlett family are recognised TOs for the Weld Range area and have a separate heritage services provider company to the nascent PBC – who will be recognised by DPLH to speak for Weld Range? In the Perth Metro area, will Swan Coastal Plain people and SWALSC aligned local Nyungar people be represented by a single LAHS or will multiple LAHS be supported and recognised in the process? I think there will have to be a facility for recognising multiple LAHS. Funding, means and technical support will need to be established and evenly distributed across LAHS in WA to allow this system to work but this is an obvious point which I am sure is in hand in the budgetary considerations behind this review of the *AHA 1972* – nevertheless, this is not outlined in the Consultation Paper.
- Proposal 5: The proposed tiered system is not clear to me from this outline. It is a good idea that the new Act allows for places to be managed and not just ‘saved’ or ‘destroyed’. However, stream-lining ‘low impact’ ground disturbance sounds problematic. Who decides that it is ‘low impact’ and on what criteria? To what degree is it possible for the new Act to recognise that ‘low impact’ in one geographical and cultural context is not necessarily ‘low impact’ in another. It sounds as though LAHS will need to be involved in bench-marking their own standards for ‘low impact’ and the Act will need to recognise these but I am not sure that is possible legislatively. Perhaps LAHS should be funded to derive CHMP for their Country, including impact thresholds, which can be referenced by the new Act? I don’t think agreements should be attached to tracts of land and transferred when leases change hand – different proponents have different aims, means, practises and scope and the Aboriginal Traditional Owners should be approached afresh regarding new projects.
- Proposal 6: Aboriginal Traditional Owners are currently free to negotiate agreements with proponents and the protection they afford is separate and additional to that of the *AHA 1972*. By working to integrate and combine these systems (State legislation protecting heritage and privately negotiated agreements), Aboriginal heritage may, in fact, be less well protected with weaknesses in land use agreements exacerbated by through flow into the application of the Act. I suppose the role of the AHC in ratifying or not agreements mitigates this risk but does seem to be a point of potential weakness in the proposals.

Additionally, Proposal 3B mentions differences in how project proposals will be assessed depending on whether or not the project is of ‘State Significance’. The threshold of ‘state significance’ needs to be well-defined and carefully and transparently judged to avoid legal difficulties where the broader consultative decision-making of the AHC is disregarded and the Minister autocratically decides in the interests of the ‘State’ that a project is to go ahead. On the face of it, all mining and infrastructure projects could be argued to be of ‘State significance’...

Thank you for the opportunity to comment on the Consultation Paper.

Yours faithfully,



Dr Vicky Winton

UWA Honorary Researcher and Consultant archaeologist